

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

Benny Hau, M.D.

**Physician's and Surgeon's
Certificate No. G 74902**

Case No.: 800-2021-079331

Respondent.

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 7, 2023.

IT IS SO ORDERED: June 9, 2023.

MEDICAL BOARD OF CALIFORNIA



**Laurie Rose Lubiano, J.D., Chair
Panel A**

1 ROB BONTA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 REBECCA L. SMITH
Deputy Attorney General
4 State Bar No. 179733
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Attorneys for Complainant
7

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **BENNY HAU, M.D.**
14 **655 South Hope Street, Unit 1204**
Los Angeles, CA 90017-3231

15 **Physician's and Surgeon's Certificate**
16 **No. G 74902,**

17 Respondent.

Case No. 800-2021-079331

OAH No. 2022100716

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Reji Varghese (Complainant) is the Interim Executive Director of the Medical Board
23 of California (Board). He brought this action solely in his official capacity and is represented in
24 this matter by Rob Bonta, Attorney General of the State of California, by Rebecca L. Smith,
25 Deputy Attorney General.

26 2. Benny Hau, M.D. (Respondent) is represented in this proceeding by attorney
27 Raymond J. McMahon, whose address is 5440 Trabuco Road, Irvine, California 92620.

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3. On or about August 11, 1992, the Board issued Physician's and Surgeon's Certificate No. G 74902 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2021-079331, and will expire on July 31, 2024, unless renewed.

JURISDICTION

4. Accusation No. 800-2021-079331 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 5, 2022. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2021-079331 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2021-079331. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 **CULPABILITY**

2 9. Respondent does not contest that, at an administrative hearing, complainant could
3 establish a prima facie case with respect to the charges and allegations in Accusation No. 800-
4 2021-079331, a true and correct copy of which is attached hereto as Exhibit A, and that he has
5 thereby subjected his Physician's and Surgeon's Certificate, No. G 74902 to disciplinary action.

6 10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
7 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
8 Disciplinary Order below.

9 **CONTINGENCY**

10 11. This stipulation shall be subject to approval by the Medical Board of California.
11 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
12 Board of California may communicate directly with the Board regarding this stipulation and
13 settlement, without notice to or participation by Respondent or his counsel. By signing the
14 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
15 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
16 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
17 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
18 action between the parties, and the Board shall not be disqualified from further action by having
19 considered this matter.

20 12. Respondent agrees that if he ever petitions for early termination or modification of
21 probation, or if an accusation and/or petition to revoke probation is filed against him before the
22 Board, all of the charges and allegations contained in Accusation No. 800-2021-079331 shall be
23 deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or
24 any other licensing proceeding involving Respondent in the State of California.

25 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
26 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
27 signatures thereto, shall have the same force and effect as the originals.

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14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or opportunity to be heard by the Respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 74902 issued to Respondent BENNY HAU, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for two (2) years to run consecutively from the conclusion of Respondent's probation term in the Board's Decision in Case No. 800-2019-052549, for a total of seven (7) years' probation, with the following terms and conditions:

1. **EDUCATION COURSE.** Within sixty (60) calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than forty (40) hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for sixty-five (65) hours of CME of which forty (40) hours were in satisfaction of this condition.

2. **MEDICAL RECORD KEEPING COURSE.** Within sixty (60) calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

1 A medical record keeping course taken after the acts that gave rise to the charges in the
2 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
3 or its designee, be accepted towards the fulfillment of this condition if the course would have
4 been approved by the Board or its designee had the course been taken after the effective date of
5 this Decision.

6 Respondent shall submit a certification of successful completion to the Board or its
7 designee not later than fifteen (15) calendar days after successfully completing the course, or not
8 later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

9 3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within sixty (60) calendar
10 days of the effective date of this Decision, Respondent shall enroll in a professionalism program,
11 that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
12 Respondent shall participate in and successfully complete that program. Respondent shall
13 provide any information and documents that the program may deem pertinent. Respondent shall
14 successfully complete the classroom component of the program not later than six (6) months after
15 Respondent's initial enrollment, and the longitudinal component of the program not later than the
16 time specified by the program, but no later than one (1) year after attending the classroom
17 component. The professionalism program shall be at Respondent's expense and shall be in
18 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

19 A professionalism program taken after the acts that gave rise to the charges in the First
20 Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of
21 the Board or its designee, be accepted towards the fulfillment of this condition if the program
22 would have been approved by the Board or its designee had the program been taken after the
23 effective date of this Decision.

24 Respondent shall submit a certification of successful completion to the Board or its
25 designee not later than fifteen (15) calendar days after successfully completing the program or not
26 later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

27 4. MONITORING – PRACTICE. Within thirty (30) calendar days of the effective date
28 of this Decision, Respondent shall submit to the Board or its designee for prior approval as a

1 practice monitor, the name and qualifications of one or more licensed physicians and surgeons
2 whose licenses are valid and in good standing, and who are preferably American Board of
3 Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or
4 personal relationship with Respondent, or other relationship that could reasonably be expected to
5 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
6 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
7 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

8 The Board or its designee shall provide the approved monitor with copies of the Decision
9 and Accusation, and a proposed monitoring plan. Within fifteen (15) calendar days of receipt of
10 the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed
11 statement that the monitor has read the Decision and Accusation, fully understands the role of a
12 monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
13 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
14 signed statement for approval by the Board or its designee.

15 Within sixty (60) calendar days of the effective date of this Decision, and continuing
16 throughout probation, Respondent's practice shall be monitored by the approved monitor.
17 Respondent shall make all records available for immediate inspection and copying on the
18 premises by the monitor at all times during business hours and shall retain the records for the
19 entire term of probation.

20 If Respondent fails to obtain approval of a monitor within sixty (60) calendar days of the
21 effective date of this Decision, Respondent shall receive a notification from the Board or its
22 designee to cease the practice of medicine within three (3) calendar days after being so notified.
23 Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring
24 responsibility.

25 The monitor(s) shall submit a quarterly written report to the Board or its designee which
26 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
27 are within the standards of practice of medicine, and whether Respondent is practicing medicine
28 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the

1 quarterly written reports to the Board or its designee within ten (10) calendar days after the end of
2 the preceding quarter.

3 If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar
4 days of such resignation or unavailability, submit to the Board or its designee, for prior approval,
5 the name and qualifications of a replacement monitor who will be assuming that responsibility
6 within fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement monitor
7 within sixty (60) calendar days of the resignation or unavailability of the monitor, Respondent
8 shall receive a notification from the Board or its designee to cease the practice of medicine within
9 three (3) calendar days after being so notified Respondent shall cease the practice of medicine
10 until a replacement monitor is approved and assumes monitoring responsibility.

11 In lieu of a monitor, Respondent may participate in a professional enhancement program
12 approved in advance by the Board or its designee, that includes, at minimum, quarterly chart
13 review, semi-annual practice assessment, and semi-annual review of professional growth and
14 education. Respondent shall participate in the professional enhancement program at Respondent's
15 expense during the term of probation.

16 5. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
17 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
18 Chief Executive Officer at every hospital where privileges or membership are extended to
19 Respondent, at any other facility where Respondent engages in the practice of medicine,
20 including all physician and locum tenens registries or other similar agencies, and to the Chief
21 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
22 Respondent. Respondent shall submit proof of compliance to the Board or its designee within
23 fifteen (15) calendar days.

24 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

25 6. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
26 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
27 advanced practice nurses.

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1 7. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
2 governing the practice of medicine in California and remain in full compliance with any court
3 ordered criminal probation, payments, and other orders.

4 8. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby
5 ordered to reimburse the Board its costs of investigation and enforcement, in the amount of
6 \$10,439.75 (ten thousand four hundred thirty nine and seventy-five cents). Costs shall be payable
7 to the Medical Board of California. Failure to pay such costs shall be considered a violation of
8 probation. This does not discharge or release Respondent from the cost recovery in the amount of
9 \$36,495.25 (thirty-six thousand four hundred ninety-five dollars and twenty-five cents) ordered in
10 Medical Board Case No. 800-2019-052549.

11 Payment must be made in full within thirty (30) calendar days of the effective date of the
12 Order, or by a payment plan approved by the Medical Board of California. Any and all requests
13 for a payment plan shall be submitted in writing by Respondent to the Board. Failure to comply
14 with the payment plan shall be considered a violation of probation.

15 The filing of bankruptcy by Respondent shall not relieve Respondent of the responsibility
16 to repay investigation and enforcement costs.

17 9. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
18 under penalty of perjury on forms provided by the Board, stating whether there has been
19 compliance with all the conditions of probation.

20 Respondent shall submit quarterly declarations not later than ten (10) calendar days after
21 the end of the preceding quarter.

22 10. GENERAL PROBATION REQUIREMENTS.

23 Compliance with Probation Unit

24 Respondent shall comply with the Board's probation unit.

25 Address Changes

26 Respondent shall, at all times, keep the Board informed of Respondent's business and
27 residence addresses, email address (if available), and telephone number. Changes of such
28 addresses shall be immediately communicated in writing to the Board or its designee. Under no

1 circumstances shall a post office box serve as an address of record, except as allowed by Business
2 and Professions Code section 2021, subdivision (b).

3 Place of Practice

4 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
5 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
6 facility.

7 License Renewal

8 Respondent shall maintain a current and renewed California physician's and surgeon's
9 license.

10 Travel or Residence Outside California

11 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
12 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
13 (30) calendar days.

14 In the event Respondent should leave the State of California to reside or to practice
15 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
16 departure and return.

17 11. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
18 available in person upon request for interviews either at Respondent's place of business or at the
19 probation unit office, with or without prior notice throughout the term of probation.

20 12. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
21 its designee in writing within fifteen (15) calendar days of any periods of non-practice lasting
22 more than 30 calendar days and within fifteen (15) calendar days of Respondent's return to
23 practice. Non-practice is defined as any period of time Respondent is not practicing medicine as
24 defined in Business and Professions Code sections 2051 and 2052 for at least forty (40) hours in a
25 calendar month in direct patient care, clinical activity or teaching, or other activity as approved by
26 the Board. If Respondent resides in California and is considered to be in non-practice,
27 Respondent shall comply with all terms and conditions of probation. All time spent in an
28 intensive training program which has been approved by the Board or its designee shall not be

1 considered non-practice and does not relieve Respondent from complying with all the terms and
2 conditions of probation. Practicing medicine in another state of the United States or Federal
3 jurisdiction while on probation with the medical licensing authority of that state or jurisdiction
4 shall not be considered non-practice. A Board-ordered suspension of practice shall not be
5 considered as a period of non-practice.

6 In the event Respondent's period of non-practice while on probation exceeds eighteen (18)
7 calendar months, Respondent shall successfully complete the Federation of State Medical Boards'
8 Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment
9 program that meets the criteria of Condition 18 of the current version of the Board's "Manual of
10 Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of
11 medicine.

12 Respondent's period of non-practice while on probation shall not exceed two (2) years.

13 Periods of non-practice will not apply to the reduction of the probationary term.

14 Periods of non-practice for a Respondent residing outside of California will relieve
15 Respondent of the responsibility to comply with the probationary terms and conditions with the
16 exception of this condition and the following terms and conditions of probation: Obey All Laws;
17 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
18 Controlled Substances; and Biological Fluid Testing.

19 13. COMPLETION OF PROBATION. Respondent shall comply with all financial
20 obligations (e.g., restitution, probation costs) not later than one hundred twenty (120) calendar
21 days prior to the completion of probation. This term does not include cost recovery, which is due
22 within thirty (30) calendar days of the effective date of the Order, or by a payment plan approved
23 by the Medical Board and timely satisfied. Upon successful completion of probation,
24 Respondent's certificate shall be fully restored.

25 14. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
26 of probation is a violation of probation. If Respondent violates probation in any respect, the
27 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
28 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke

1 Probation, or an Interim Suspension Order is filed against Respondent during probation, the
2 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall
3 be extended until the matter is final.

4 15. LICENSE SURRENDER. Following the effective date of this Decision, if
5 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
6 the terms and conditions of probation, Respondent may request to surrender his or her license.
7 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
8 determining whether or not to grant the request, or to take any other action deemed appropriate
9 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
10 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
11 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
12 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
13 application shall be treated as a petition for reinstatement of a revoked certificate.

14 16. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
15 with probation monitoring each and every year of probation, as designated by the Board, which
16 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
17 California and delivered to the Board or its designee no later than January 31 of each calendar
18 year.

19 17. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
20 a new license or certification, or petition for reinstatement of a license, by any other health care
21 licensing action agency in the State of California, all of the charges and allegations contained in
22 Accusation No. 800-2021-079331 shall be deemed to be true, correct, and admitted by
23 Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or
24 restrict license.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Raymond J. McMahon. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 3/9/23
BENNY HAU, M.D.
Respondent

I have read and fully discussed with Respondent Benny Hau, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: March 9, 2023
RAYMOND J. MCMAHON
Attorney for RespondentENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

DATED: March 9, 2023

Respectfully submitted,

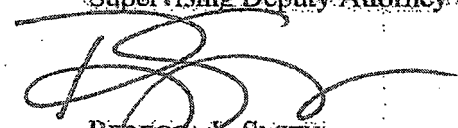
ROB BONTA
Attorney General of California
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65796643.docx

Exhibit A

Accusation No. 800-2021-079331

1 ROB BONTA
Attorney General of California
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12 **In the Matter of the Accusation Against:**

Case No. 800-2021-079331

13 **BENNY HAU, M.D.**
14 **655 South Hope Street, Unit 1204**
Los Angeles, CA 90017-3231

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
16 **No. G 74902,**

Respondent.

17
18
19 **PARTIES**

20 1. William Prasifka (Complainant) brings this Accusation solely in his official capacity
21 as the Executive Director of the Medical Board of California, Department of Consumer Affairs
22 (Board).

23 2. On or about August 11, 1992, the Medical Board issued Physician's and Surgeon's
24 Certificate Number G 74902 to Benny Hau, M.D. (Respondent). That license was in full force
25 and effect at all times relevant to the charges brought herein and will expire on July 31, 2024,
26 unless renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2004 of the Code states:

The board shall have the responsibility for the following:

(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

(b) The administration and hearing of disciplinary actions.

(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

(f) Approving undergraduate and graduate medical education programs.

(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

(h) Issuing licenses and certificates under the board's jurisdiction.

(i) Administering the board's continuing medical education program.

5. Section 2227 of the Code states:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the board.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

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1 (5) Have any other action taken in relation to discipline as part of an order of
2 probation, as the board or an administrative law judge may deem proper.

3 (b) Any matter heard pursuant to subdivision (a), except for warning letters,
4 medical review or advisory conferences, professional competency examinations,
5 continuing education activities, and cost reimbursement associated therewith that are
6 agreed to with the board and successfully completed by the licensee, or other matters
7 made confidential or privileged by existing law, is deemed public, and shall be made
8 available to the public by the board pursuant to Section 803.1.

9 6. Section 2234 of the Code, states:

10 The board shall take action against any licensee who is charged with
11 unprofessional conduct. In addition to other provisions of this article, unprofessional
12 conduct includes, but is not limited to, the following:

13 (a) Violating or attempting to violate, directly or indirectly, assisting in or
14 abetting the violation of, or conspiring to violate any provision of this chapter.

15 (b) Gross negligence.

16 (c) Repeated negligent acts. To be repeated, there must be two or more
17 negligent acts or omissions. An initial negligent act or omission followed by a
18 separate and distinct departure from the applicable standard of care shall constitute
19 repeated negligent acts.

20 (1) An initial negligent diagnosis followed by an act or omission medically
21 appropriate for that negligent diagnosis of the patient shall constitute a single
22 negligent act.

23 (2) When the standard of care requires a change in the diagnosis, act, or
24 omission that constitutes the negligent act described in paragraph (1), including, but
25 not limited to, a reevaluation of the diagnosis or a change in treatment, and the
26 licensee's conduct departs from the applicable standard of care, each departure
27 constitutes a separate and distinct breach of the standard of care.

28 (d) Incompetence.

(e) The commission of any act involving dishonesty or corruption that is
substantially related to the qualifications, functions, or duties of a physician and
surgeon.

(f) Any action or conduct that would have warranted the denial of a certificate.

(g) The failure by a certificate holder, in the absence of good cause, to attend
and participate in an interview by the board. This subdivision shall only apply to a
certificate holder who is the subject of an investigation by the board.

7. Section 2266 of the Code states:

The failure of a physician and surgeon to maintain adequate and accurate
records relating to the provision of services to their patients constitutes unprofessional
conduct.

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COST RECOVERY

8. Section 125.3 of the Code states:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licensee that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in

1 that board's licensing act provides for recovery of costs in an administrative
disciplinary proceeding.

2 **FACTUAL ALLEGATIONS**

3 9. Respondent, a board certified family medicine physician, owns and operates Sculpt
4 Silverlake, a medical spa where aesthetics procedures are performed, such as the injection of
5 dermatologic fillers and Botox. Respondent does not have formal training in aesthetic care or
6 injectable treatments. He has attended seminars and conferences in the areas of aesthetic care and
7 injectable treatments, as well as having received individual training from medical aesthetic
8 vendors for products he uses in his practice. For example, in order to purchase Sculptra,
9 Respondent completed a two-hour Sculptra¹ training with Galderma² in November 2018.

10 10. Patient 1,³ a 39-year-old female patient, presented to Sculpt Silverlake for a Sculptra
11 consultation in February 2021.

12 11. On February 13, 2021, Respondent performed a "good faith exam" of Patient 1 via
13 videoconference while the patient was being seen in person by Nurse C.H. at Respondent's office.
14 Patient 1's medical records incorrectly reflect that Respondent's exam took place on February 4,
15 2021.

16 12. In the brief note incorrectly dated February 4, 2021, Respondent documented that
17 Patient 1 was healthy, with no medical problems. She was taking no medications, had no allergy
18 to medications, and had undergone cosmetic surgery in the past. Respondent noted that Patient 1
19 was considering butt augmentation with Sculptra and scar treatment. Respondent did not identify
20 or describe the nature, extent, or timing of Patient 1's prior cosmetic surgery nor did Respondent
21 identify or describe the scar for which the patient was seeking treatment. At the time of his
22 interview with the Board, Respondent stated that the patient's past cosmetic surgery to the

23 ¹ Sculptra is injectable poly-L-lactic acid. It is indicated for use in people with healthy immune
24 systems for the correction of shallow to deep nasolabial fold contour deficiencies and other facial
25 wrinkles. Sculptra is not approved by the United States Food and Drug Administration (FDA) for use on
any part of the body except the face. Injecting Sculptra to the buttocks is considered an off-label use.

26 ² Galderma is a dermatology company that produces various prescription drugs and aesthetic
solutions, including Sculptra.

27 ³ For privacy purposes, the patient in this Accusation is referred to as Patient 1, with the identity of
28 the patient disclosed to Respondent in discovery.

1 buttock had been botched, she had some asymmetry, and that the patient asked Respondent
2 whether Sculptra would help her achieve symmetry.⁴ Respondent admits that he should have
3 been more specific with respect to documenting the details of Patient 1's prior procedure. Neither
4 Respondent's clinic note nor the patient's "before photographs" (pre-treatment) indicate the
5 location of the scar.

6 13. In a clinic note dated February 13, 2021, e-signed by "SCULPT TEAM," it was noted
7 that Nurse C.H. was Patient 1's provider. The note reflects that Patient 1 presented to
8 Respondent's office for "a consultation/treatment for Sculptra" and that she was "seen and
9 discussed with Respondent."⁵ It was further noted that consents had been signed and all
10 questions answered. Patient 1's medical records include a General Consent and a Sculptra
11 Aesthetics Consent, both electronically signed by Patient 1 on February 13, 2021. Neither of the
12 written consents nor the clinic notes reflect that Sculptra was being used off-label.

13 14. Nurse C.H. performed the Sculptra procedure. Patient 1's medical records
14 documented that "ten (10) vials of Sculptra was inject in the Butt." At the time of Respondent's
15 interview with the Board, Respondent stated that he always starts patients off with ten (10) vials
16 of Sculptra, though more may eventually be needed.

17 15. Other than noting that ten (10) vials of Sculptra were injected into Patient 1's
18 buttocks, a diagram of a female back was circled at the buttocks area. There was no
19 documentation of the specific injection sites or the quantity of Sculptra used on each side of the
20 buttocks.⁶ Nurse C.H. noted: "post treatment instructions were given" and the patient
21 "verbaliz[ed] understanding of care."

22 ///

23 ⁴ Before treatment photographs of Patient 1 taken on February 13, 2021, reveal asymmetry of the
24 buttocks.

25 ⁵ As set forth above, the note dated February 4, 2021, documented Respondent's good faith exam
via videoconference on February 13, 2021.

26 ⁶ At the time of his interview with the Board, Respondent stated that 5 vials were administered per
27 side. He also stated that it is difficult to state exactly where the injections were given other than generally
28 in the buttocks area and that the diagram used as part of his electronic medical record keeping program
was very generalized.

1 16. Nurse C.H. also noted that Patient 1 was seen for "M22 Treatment."⁷ The chart note
2 reflected that the patient was seen and discussed with Respondent (referring to Respondent's
3 videoconference good faith exam, which was misdated). It was further noted that the patient was
4 counseled on the possible risks of the procedure. It was noted that a test spot was performed and
5 that Patient 1 underwent ResurFX treatment⁸ with no complications. The patient was satisfied
6 with the treatment and her next treatment was scheduled. With respect to the scar treatment, there
7 was no description of the scarring in the documentation, other than the scar type being flat and
8 severe. In addition, there was no indication of the location of the scarring.

9 17. In the months following the treatment, Patient 1 became concerned about the efficacy
10 of her treatment. She emailed Respondent demanding a refund and wrote negative online reviews
11 of Respondent's practice. In July 2021, Respondent ultimately provided Patient 1 a partial refund
12 in exchange for Patient 1 entering into a non-disparagement agreement and the removal of her
13 online negative review.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Gross Negligence)**

16 18. Respondent is subject to disciplinary action under Code section 2234, subdivision (b),
17 in that he engaged in gross negligence in the care and treatment of Patient 1. Complainant refers
18 to and, by this reference, incorporates herein, paragraphs 9 through 17, above, as though fully set
19 forth herein. The circumstances are as follows:

20 **Failure to Perform a Thorough Patient Assessment**

21 19. The standard of care requires a thorough patient assessment prior to providing
22 medical treatment. That assessment and its depth may vary somewhat depending upon the nature
23 of the care provided and the patient's overall health, however, the physician must always
24 adequately assess relevant anatomy, patient condition, medical history and potential issues that
25 may cause complications or otherwise endanger the patient from the treatment contemplated.

26
27 ⁷ M22 is a modular aesthetic laser used for treatment of a variety of skin conditions, including the
appearance of scars.

28 ⁸ ResurFX treatment is non-ablative, fractional laser skin resurfacing.

1 20. Respondent failed to properly assess Patient 1's pre-operative condition prior to
2 allowing Nurse C.H. to provide treatment. Patient 1 had undergone prior cosmetic surgery before
3 presenting to Respondent's office, yet Respondent obtained no detail about the patient's
4 procedure other than she had some cosmetic surgery to the buttocks that was botched in the past.
5 Respondent failed to determine the specific surgery that had been performed. This is significant
6 because procedures such as buttock implants and fat transfers can complicate injectable
7 procedures. In addition, Respondent failed to determine when the prior procedure was
8 performed. This is also significant because a sufficient amount of time for adequate healing must
9 take place prior to injecting foreign substrates. Respondent also failed to determine whether the
10 complications from the prior cosmetic surgery were other than cosmetic dissatisfaction that could
11 recur with additional treatment of the same area. This is an extreme departure from the standard
12 of care.

13 Failure to Provide a Therapeutic Course of Treatment Specific to Patient 1

14 21. The determination of which therapeutic treatment to provide to a patient, is patient
15 specific. The standard of care requires that the physician provide a therapeutic course of
16 treatment specific to the particular patient. The physician should provide therapeutic treatments
17 that have a high likelihood of achieving the medical goal with the lowest chance of
18 complications.

19 22. Respondent's standard initial dose for patients receiving Sculptra is ten (10) vials.
20 There is no standard first dose of Sculptra. The quantity of Sculptra to be used should be tailored
21 for the particular patient, using the minimal dosage required to obtain the intended effect.
22 Further, treatment with ten (10) vials of Sculptra split evenly with five (5) vials administered per
23 side of Patient 1's buttocks was clinically inappropriate. Treating Patient 1's asymmetry with a
24 symmetric amount of volume was unlikely to correct this patient's concern. This is an extreme
25 departure from the standard of care.

26 Inadequate Training and Continuing Education

27 23. In order to effectively provide medical care and or supervise the administration of
28 effective medical care, the physician must have adequate training. The training should be

1 provided ideally in residency and have a broad foundation supporting individual treatment
2 modalities. The training should include a broad foundation of anatomy alternate therapeutics, an
3 understanding of sequelae of intervention, and the ability to manage complications and
4 morbidities of treatment. When physicians choose to practice outside of their scope of their
5 formal training, additional training should be obtained in a non-biased, continuing medicine
6 education supported system or collection of programs. Reliance solely on specific vendors for
7 individual training may bring in biases that may affect patient care.

8 24. While Respondent completed a two-hour Sculptra training with Galderma in
9 November 2018 in order to be able to purchase Sculptra, he failed to obtain adequate training for
10 its off-label use. Respondent's lack of training resulted in the recommendation of Sculptra for
11 Patient 1, to treat a potentially surgically compromised area, and proceeding with the treatment
12 was unlikely to provide the patient with the contemplated benefit. This is an extreme departure
13 from the standard of care.

14 25. Respondent's acts and/or omissions as set forth in paragraphs 9 through 24, above,
15 whether proven individually, jointly, or in any combination thereof, constitute gross negligence
16 pursuant to section 2234, subdivision (b), of the Code. Therefore, cause for discipline exists.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Repeated Negligent Acts)**

19 26. Respondent is subject to disciplinary action under section 2234, subdivision (c), of
20 the Code in that he was negligent in the care and treatment of Patient 1. Complainant refers to
21 and, by this reference, incorporates herein, paragraphs 9 through 24, above, as though fully set
22 forth herein. The circumstances are as follows:

23 27. Each of the alleged acts of gross negligence set forth above in the First Cause for
24 Discipline is also a negligent act.

25 **Medical Record Keeping**

26 28. The standard of care requires physicians to keep accurate and adequate medical
27 records. This is especially pertinent in procedure-based settings. Medication history, patient vital
28 signs, complications and interventions performed to manage complications, all must be

1 documented in substantial detail. The timing of patient evaluations and treatments must be
2 appropriately documented.

3 29. Regardless of the electronic medical record software being utilized, it is the
4 provider's responsibility to accurately document patient care. Patient 1 had a relevant past
5 surgical intervention to her buttocks. As such, Patient 1 sought subsequent treatment from
6 Respondent. There was inadequate documentation by Respondent concerning the patient's prior
7 cosmetic surgery, including the type of surgery, the nature of the complication (other than
8 asymmetry), and when the surgery was performed. Respondent failed to appropriately document
9 in sufficient detail the Sculptra treatment and scar revision treatment rendered to Patient 1.
10 Respondent also failed to accurately document the dates of examination, evaluations, and
11 treatments of Patient 1. This is a simple departure from the standard of care.

12 30. Respondent's acts and/or omissions as set forth in paragraphs 9 through 29, above,
13 whether proven individually, jointly, or in any combination thereof, constitute repeated acts of
14 negligence pursuant to section 2234, subdivision (c), of the Code. Therefore, cause for discipline
15 exists.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Failure to Maintain Adequate and Accurate Medical Records)**

18 31. Respondent is subject to disciplinary action under section 2266 of the Code in that he
19 failed to maintain adequate and accurate medical records for Patient 1. The circumstances are as
20 follows:

21 32. The allegations as set forth in the First and Second Causes for Discipline, above, are
22 incorporated herein by reference.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 74902, issued to Benny Hau, M.D.;
2. Revoking, suspending or denying approval of Benny Hau, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Benny Hau, M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: OCT 05 2022


WILLIAM BRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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